



HM Government

# “STAYING PUT”

Arrangements for Care Leavers aged 18 and above to stay on with their former foster carers

## DfE, DWP and HMRC Guidance

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# Aim

The aim of this guidance is to set out the different “Staying Put” frameworks and context i.e. arrangements where-by young people aged eighteen and older who were previously looked after remain living with their former foster carer/s (who may also remain a foster carer for younger children). The guidance sets out the Department for Education (DfE) context, followed by the Department for Work and Pensions (DWP) benefit related issues for both Foster/”Staying Put” carers and young people, and finally sets out the Her Majesty’s Revenue and Customs (HMRC), Income Tax and National Insurance framework.

# Introduction

The Care Matters White Paper contained a significant focus on improving the support for children preparing for adulthood including a pilot programme enabling young people to remain with their foster carers beyond the age of eighteen. To meet the commitments in the White Paper and the new duties towards care leavers in the Children and Young Persons Act 2008, new guidance and regulations relating to care leavers emphasise a more graduated approach to planning transition to adulthood. The average age of leaving home is rising and the transition to adulthood is increasingly becoming more complex and elongated. The “Staying Put” initiative and participating authorities have been working to pilot ways to extend children/young people’s transition to adulthood within a family and household supported environment. The intention being to ensure young people can remain with their former foster carers until they are prepared for adulthood, can experience a transition akin to their peers, avoid social exclusion and be more likely to avert a subsequent housing and tenancy breakdown.

## Terminology

From the age of eighteen young people are no longer legally ‘in care’ or ‘looked after’ and therefore fostering arrangements and legislation relating to children placed with foster carers no longer applies. In circumstances where a young person remains with their former foster carer/s after their eighteenth birthday, the arrangement should therefore be deemed an ‘age eighteen and older arrangement’ or “Staying Put” arrangement. The term ‘arrangement’ should be used rather than placement; the term ‘placement’ denotes a situation where the local authority arranged and placed the child with a foster carer. Once the child reaches the age of eighteen and legal adulthood, the local authority is no longer making a placement, but facilitating a “Staying Put” arrangement for the young person.

Where possible, DfE, DWP and HMRC definitions and frameworks relating to “Staying Put” have been harmonized. However, given the complexity of the three different legislative frameworks relating to “Staying Put” arrangements, and the fact that some of the legislation does not cover all four countries in the United Kingdom, this has not been wholly possible. The section below sets out the three definitional frameworks.

## Department for Education Definitions

As previously highlighted the intention behind the Department for Education “Staying Put” initiative and pilots was to explore a range of arrangements where-by young people could remain living with their foster carer/s (former foster carer/s) after their eighteenth birthday on a familial basis, having already lived with, or as, a member of the foster carer/s family over a period of time.

The term “Staying Put” is therefore used to define the following arrangements where:

1. A young person who was looked after immediately prior to their eighteenth birthday (as an eligible child) continues to reside with their former foster carer/s;

2. The carer/s were acting as foster carers to the child immediately prior to the young person's eighteenth birthday (that is, the carers were approved as foster carers in accordance with the Fostering Service (England) Regulations 2011 and the child had been placed with them by the local authority, or via an Independent Fostering Agency);
3. A young person is deemed an eligible child, within the meaning of paragraph 19B(2) of Schedule 2 to the Children Act 1989, immediately before he/she reached eighteen;
4. The "Staying Put" arrangement is set out in the child/young person's Pathway Plan;
5. A proportion of the allowance paid to the "Staying Put" carer/s is paid by the Local Authority Children's Services under section 23C of the Children Act 1989;
6. The "Staying Put" arrangement extends until:
  - the young person first leaves the "Staying Put" arrangement;or
  - the young person reaches their twenty-first birthday, if continuously, and still living in the arrangement;or
  - the young person completes the agreed programme of education or training being undertaken on their twenty-first birthday, if continuously living in the arrangement since their eighteenth birthday.

DfE "Staying Put" arrangements can therefore cover all young people who were previously eligible children living in foster care, and who were looked after immediately prior to their eighteenth birthday, as long as the arrangement meets the above criteria, regardless of whether the young person is undertaking full or part education, training or employment or none of these activities.

## Department for Work and Pensions Definitions

The specific DWP legislation covering "Staying Put" arrangements highlights that (1) where a young person continues to reside with their former foster carer after their eighteenth birthday on a non-commercial and familial basis, and (2) where the child was looked after immediately prior to their eighteenth birthday, and (3) where the payments are made by the local authority to the carer under section 23C of the Children Act 1989, the payments are disregarded in calculating the carers entitlement to means tested benefits.

When a commercial arrangement is made, i.e. any element of the cost of the arrangement comes from a source other than section 23C; the non-section 23C element will be taken into account in the calculation of the "Staying Put" carers own means tested benefit claim.

Additionally, the disregard is lost on the whole payment (section 23C and non-section 23C elements) when the young person first leaves the "Staying Put" arrangement, should the young

person return to their former foster/“Staying Put” carer or, move to another carer after their eighteenth birthday.

Therefore the DWP “Staying Put” framework primarily applies to a young person remaining with their former foster carer on a familial basis, where no commercial arrangement applies and until they first leave the arrangement, or until the age of twenty-one, or until the end of an agreed programme of education or training being undertaken on the young person’s twenty-first birthday if they continuously lived in the arrangement.

See the benefits section regarding the application of benefit rules to the young person and their foster carer/former foster carer where a commercial arrangement applies.

## HM Revenue and Customs Definitions

HMRC have defined “Staying Put” more broadly than the DfE and DWP to ensure compatibility with legislation covering all four countries within the United Kingdom. This can be advantageous to both carers and young people where a young person wishes to return to the same or, another arrangement after they left their original “Staying Put” arrangement.

The term “Staying Put” (HMRC) is therefore used to define arrangements where:

1. A young person was looked after immediately prior to their eighteenth birthday;
2. The young person has a Pathway Plan;
3. A proportion of the allowance paid to the “Staying Put” carer/s is paid by the Local Authority;
4. “Staying Put” arrangements can extend until:
  - the young person reaches their twenty-first birthday;or
  - the young person completes the agreed programme of education or training being undertaken on their twenty-first birthday.

Some slightly different rules also apply to ensure arrangements in Scotland are catered for.

### **Note:**

This broader HMRC definition would allow for a young person to return to an arrangement (“Staying Put”) for example during a university vacation. Additionally, all other HMRC requirements would need to be met, i.e.:

- the young person was looked after immediately prior to their 18th birthday;
- the young person is aged 18 to 21, or, if 21 or over is continuing a programme of education or training;
- the young person has a pathway plan;

- a proportion of the allowance paid to the carer is paid by the local authority.

This broader definition can therefore mean that any person/carers can be defined as a “Staying Put” carer, from a HMRC prospective, in circumstances where the four criteria above are met. The carer does not need to be a registered foster carer or former foster carer. In circumstances where Children’s Services define a person as a “Staying Put” carer, by paying them an allowance, as in the above situation, the responsible local authority will need to ensure the safeguarding arrangements are appropriate to meet the young person’s needs and that the monitoring and support for the “Staying Put” carer is also satisfactory.

## Definitions Overview

Where a young person is living in a “Staying Put” arrangement that is broader than the DfE “Staying Put” definition, i.e. the “Staying Put” carer is no longer a registered foster carer, the local authority will need to ensure the arrangement meets the ‘suitable accommodation’ requirements of the Planning Transition to Adulthood Guidance, which includes the Care Leavers (England) Regulations 2010. See section below on regulatory frameworks:

1. where foster children are living in the arrangement;
2. where no foster children are living in the arrangement.

With the exception of the HMRC criteria regarding young people being able to return to a different “Staying Put” carer between the age of 18 and 21, or until the completion of an education or training course, all of the other criteria acknowledge that “Staying Put” arrangements are continuing under the premise that the young person was previously looked after and is remaining with their former foster carers.

# Changing Status – Foster Care Placement to “Staying Put” Arrangement

Following a young person’s eighteenth birthday, the legal basis on which they occupy the property (former foster care home) changes and they become an ‘excluded licensee’ who is affectively lodging in the “Staying Put” carer/s home. Whilst the term ‘excluded licensee’ is a legal one, it should not denote that the young person will be treated differently than they were as a fostered child. In addition, the carer may also become, and be deemed the young person’s landlord.

The associated change from foster child to adult member of the household, and for the carer from foster carer to “Staying Put” carer, (technically the young person’s landlord) should be carefully and sensitively planned in order to ensure that both young people and the carer/s understand the nature of the arrangement and that the positive aspects of being in foster care are not diminished by the new legal and financial arrangements and terminology. See Appendix B

An excluded licensee can be asked to leave the property by the “Staying Put” carer, who must give ‘reasonable notice’. In extreme circumstances it may be considered reasonable for the “Staying Put” carer to give very short notice and ask the young person to leave on the same day.

Local Authorities should develop “Staying Put” policies that provide foster carer/s and children/young people with information and guidance relating to all aspects of continuing the young person’s accommodation with their carer beyond the young person’s eighteenth birthday. The policy should cover the following areas:

- the criteria for continuing a fostering placement as a “Staying Put” arrangement once the child reaches 18;
- how the “Staying Put” arrangement will impact on the allowances provided by the authority and whether other funding, for example Housing Benefit and funding for housing related support, will contribute to meeting some of the “Staying Put” costs;
- whether additional allowances provided when the child was a foster child to ensure they were embedded in the family will continue, for example holiday allowances, birthday and Christmas/festival allowances;
- any financial contributions from young people from their wages, salary, benefits or education allowances;
- how the Income Tax, National Insurance and welfare benefits situation of carer/s may be affected by “Staying Put” payments;<sup>1 2</sup>

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<sup>1</sup> HMRC Help Sheet 236 provides advice on income tax and national insurance for foster carers, kinship carers, staying put carers, adult placement carers and parent and child arrangements all of which are deemed ‘Shared Lives Carers’ who are eligible for Qualifying Care Relief.



- insurance issues, including liability insurance and household insurance;
- the impact on foster carers' approval and their terms of approval, including the numbers approved for, and whether this number includes the "Staying Put" young person;
- safeguarding arrangements, including Criminal Records Bureau checks on young people reaching eighteen where fostered children remain living in the household.

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<sup>2</sup> Kinship Care and Family and Friends Care is the name often given to fostering arrangements whereby people who are generally related to, or friends of children, are approved as foster carers for specific children. If the carer/s are approved via fostering legislation and the child or young person is/was looked after, these arrangements are treated the same way as other foster care/"Staying Put" arrangements within the DWP and HMRC regulations.

Less favourable rules apply to the carers and children/young people with regard to income tax, national insurance and means tested benefits (both prior to and after the child/young person's eighteenth birthday) if DWP or HMRC assessments are made on the basis of the child/young person living with family members and within private fostering arrangements, therefore it is essential that evidence of the formal fostering arrangement is provided.

# Fostering and “Staying Put” Regulatory Frameworks

## Where foster children are living in the “Staying Put” arrangement

Where fostered children are living in the “Staying Put” arrangement/household the checks and requirements associated with fostering legislation will remain as a prerequisite and will therefore provide a framework for safeguarding and checking arrangements for the whole household.

In these situations the carer must remain an approved foster carer and the Fostering Services (England) Regulations and Guidance 2011 will apply with the consequential requirements of supervision, review and safeguarding. Whilst the fostering legislation will primarily apply to the placements of the fostered children/children looked after, it does ensure a system of approval, checking and supervision is applied to the whole household.

Additionally, where foster children are in placement, the foster carers will need to be returned to the fostering panel due to a change in circumstances as the child/young person “Staying Put” will have reached adulthood and become an adult member of the fostering household.

It should also be noted that young people remaining in a foster care household at the age of eighteen, will become adult members of the household and will require a valid CRB check in settings where a foster child or foster children are living. To ensure the check (and possible subsequent risk assessment) is completed by the child/young person’s eighteenth birthday the process will need to commence in sufficient time.

## Where no foster children are living in the “Staying Put” arrangement

Whilst legislation relating to fostering will no longer apply (if no foster child remains in the household), key standards should continue to govern the expectations of the “Staying Put” arrangement and carer/s when a child/young person reaches the age of eighteen. This should include:

- a system for considering if a person’s approval as a foster carer should be ended and for implementing the deregistration/termination process in circumstances where the foster carer is unlikely to be caring for any further foster children in the future;
- a system for reviewing and approving the “Staying Put” arrangement and carer/s to ensure the arrangement complies with local authority expectations;
- safeguarding and risk assessment checks on household members and in certain circumstances regular visitors;
- health and safety requirements (as a minimum this should comply with landlord and licensee/tenant requirements);

- regular supervision and support, possibly, from their fostering supervising social worker;
- opportunities to attend appropriate training.

The application of the above checks will only need to be considered where there are no fostered children remaining in the placement. Local authorities will need to assess individual circumstances and consider the appropriateness of all of these checks, where the “Staying Put” young person is the only person living with their carer/s and it is not envisaged that further foster children will be placed.

In circumstances where it is clear that the “Staying Put” carer will not be fostering any further children, it may be deemed appropriate to terminate their approval as a foster carer. In situations where it is possible that they may foster again in the future, it would be inappropriate to terminate their approval; given the length of time that re-approval would take. Where a foster carer’s approval is terminated local authorities will need to ensure the “Staying Put” arrangement continues to meet appropriate standards.

## Minimum Standards

As a minimum, local authorities will need to ensure the “Staying Put” arrangement is deemed ‘suitable accommodation’ and meets the requirement of Regulation 6, 7 & 9 and Schedule 2 of the Planning Transition to Adulthood Guidance, which includes the Care Leavers (England) Regulations 2010.

The “Staying Put” framework is aimed at former relevant children who require an extended period with their former foster carer/s due to delayed maturity, vulnerability and/or in order to complete their education or training. Where young people have an on-going cognitive disability and meet the adult services – Fair Access to Care Services criteria (Putting People First), foster placements should be converted to Adult Placements/Shared Lives Arrangements when the child reaches their eighteenth birthday. This is important to insure that both the child and young person and the foster carer and adult placement carer have a formal regulatory and safeguarding framework that addresses their respective needs.

# Benefits for Young People

Depending on their circumstances young people who remain in a “Staying Put” arrangement may be able to claim means tested benefits for their personal needs from their eighteenth birthday.

1. Young people can claim Income Support under the ‘Relevant Education’ rules if they remain ‘estranged’ from their family and are undertaking a full time (over 12 hours of guided learning) education or training course which is of a non-advanced education level.
2. Lone Parents can claim Income Support until their child is 5 years old, Healthy Start Vouchers and a Sure Start Maternity Grant (1st child only) 11 weeks before the due birth date. From the birth of their baby they will also be eligible to claim Child Tax Credits and Child Benefit. (Eligible and Relevant lone parents aged 16 & 17 can also claim the above benefits, but only from the birth of their baby, unless they are in receipt of Employment & Support Allowance).
3. Employment & Support Allowance can be claimed in circumstances where young people are deemed ‘sick or disabled’. (If the young person fits the eligibility criteria this benefit can be claimed from their 16th birthday regardless of being section 20, or section 31, or living in foster care). Young people with a disability may also be in receipt of a Disability Living Allowance (to be replaced by Personal Independence Payment from April 2013)
4. Jobseekers Allowance where young people are registered as unemployed and are available for and actively seeking full time employment.
5. Housing Benefit and Council Tax Benefit, but only where there is a liability to pay rent on a commercial basis. It should be noted that there are implications for the carer where housing benefit is claimed, particularly if the carer is in receipt of a means tested benefit themselves, these issues are explained below (national Council Tax Benefit rules are abolished from April 2013 and will be replaced by a council tax reduction scheme established and administered by each local authority).

Claiming 1, 2, 3 or 4 will not normally have any impact on the foster carers or “Staying Put” carer/s’ own benefits should they be claiming themselves.

## Housing Benefit, and Council Tax Benefit for Young People

Children and young people who are looked after, or are relevant children (as defined in section 23A of the Children Act 1989) are not able to claim Housing Benefit. In addition, children do not have a liability for Council Tax until their eighteenth birthday. It should be noted that children looked after (section 22(1) of the Children Act 1989) who have not accrued the prerequisite 13 weeks to be deemed an eligible child are also not eligible to claim Housing Benefit. For definitions of ‘eligible’, ‘relevant’, ‘former relevant children’ and ‘qualifying children and young people’ see Appendix D.

From the age of eighteen, young people who fall within the definition of former relevant children (or qualifying) who have a liability to pay rent can claim help from Housing Benefit towards their rent.

Whether a young person qualifies for Housing Benefit depends on the type of accommodation in which they are living. Housing Benefit can help with the rents charged by Councils and Housing Associations, in hostel (registered social landlord) accommodation as well as for properties in the private sector.

Those care leavers living in the private sector will normally have their Housing Benefit based on the Local Housing Allowance. Their rent may be met to the one-bedroom self contained rate until they are aged twenty-two when it will be met to the one bedroom shared rate.

Where meals are provided, as in some “Staying Put” arrangements, the rules are more involved. The level of Housing Benefit being based on a reasonable rent for a one-bedroom dwelling with meals included which is set by the Local Rent Officer who will provide what is called a Local Reference Rent or a Claim Related Rent for their home. The lowest of these, less an amount for meals, will become the maximum rent used to work out the amount of help given with their rent, until they are aged twenty-two when it will be met to the Single Room Rent.

In circumstances where Housing Benefit is based on the maximum rent, it is possible to request a Pre-Tenancy Determination in advance of the Housing Benefit claim being submitted, in order to determine the level of Housing Benefit that will be paid on a given property. Pre-Tenancy Determinations are carried out by the Local Rent Officer.

Once a child reaches the age of eighteen the primary framework governing these arrangements is tenure law. Young people are deemed excluded occupiers on a license.

To be eligible to claim Housing Benefit young people must have a liability to pay rent that is both enforceable and is established on a commercial basis. When considering the commerciality of the arrangement the local authority (Housing Benefit Department) would need to make a judgement on the facts, including being satisfied that the arrangement is not ‘contrived’ and doesn’t include any unenforceable terms. It is therefore important that where Children’s Services are involved in setting up such arrangements, a policy is available that explains how the level of the rent has been agreed, and set outs how much is paid for support, utilities and food/meals. The rent agreement should also govern young people’s contributions and have procedures to deal with young people who make rent payments and who do not rely on Housing Benefit.<sup>3</sup>

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<sup>3</sup> In certain circumstances Children’s Services may wish to make payments to young people who temporarily and due to their vulnerability, are not claiming means tested welfare benefits. A small living allowance can be counted as income when calculating entitlement to housing benefit (technically a young person can have a zero income and be awarded housing benefit).

## Housing Benefit Issues for “Staying Put” Arrangements

Children’s Service will need to have clear policies on young people’s liability for rent which must be applied consistently otherwise the arrangements may be deemed a ‘contrivance’ by the Housing Benefits Department to maximise Housing Benefit for the young person. A letter/license from the “Staying Put” carers and endorsed by Children’s Services setting out the nature of the license agreement and the full payment/costs broken down into 1) Rent, 2) Support, 3) Utilities, 4) Food/Meals, should be provided which can be used to establish the young person’s liability to pay rent.

Where no meals/food is provided within the “Staying Put” arrangement, the method used to calculate the level of Housing Benefit will be the Local Housing Allowance. Young people who are care leavers are eligible to claim up to the one-bedroom self contained Local Housing Allowance rate so long as there is a genuine liability for rent to that level on a commercial basis.<sup>4</sup>

Where meals/food is provided within the “Staying Put” arrangement, the method used to calculate the level of Housing Benefit will be the 1996 Housing Benefit maximum rent rules relating to ‘Boarder’ arrangements. The amount payable will be set by the Local Rent Officer who will provide a Local Reference Rent or a Claim Related Rent for their home. The lowest of these will be used to work out the amount of help given with their rent, less an amount for meals.

Young People are able to claim Housing Benefit even when their “Staying Put” carer/s are in receipt of Housing Benefit themselves. However, where carers are in receipt of benefits themselves the non-section 23C element will be counted as income from the “Staying Put” arrangement, this non-section 23C element will be treated as income from a ‘Boarder’. See section on carers’ benefits.

Where Housing Benefit is paid under the 1996 Housing Benefit rules Children’s Services “Staying Put” Schemes can request that the Housing Benefit payments are paid directly to Children’s Services as agents (sometimes deemed a third party claim) of the carer/s.

Where Housing Benefit is paid under the Local Housing Allowance rules this should be paid to the claimant, unless the claimant is ‘vulnerable’ in which case the payment can be paid to the landlord or Children’s Services as an agent for the landlord. Being previously looked after, and requiring an on-going supported environment should help to highlight the continued ‘vulnerability’ of the claimant.

To ensure positive partnership working Children’s Services staff and Housing Benefits staff should set up liaison arrangements to develop an understanding of their respective frameworks and to formalise joint working arrangements.

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<sup>4</sup> Care-leavers are covered by the "protection" from the shared accommodation rate offered by Regulation 13D (2) (ii) of the Housing Benefit (Local Housing Allowance) Amendment Regulations.

Housing Benefit cannot be paid to close relatives; therefore young people who remain living with closely related former kinship/family and friends carers under a “Staying Put” arrangement will not be able to claim Housing Benefit towards their rent liability.<sup>5</sup>

## Benefit Issues for “Staying Put” Carers’

This section covers the rules regarding payments to “Staying Put” carer/s that are in receipt of a means tested benefit/s.

Payments made to the “Staying Put” carers from the Local Authority Children’s Services under section 23C of the Children Act 1989 via the young person, or directly to the carer/s on behalf of the young person are disregarded when calculating the carer’s entitlement to means tested welfare benefits. The section 23C payment is disregarded in its entirety in circumstances where young people continue to live as a member of their former foster carer’s family on a non-commercial basis. Where young people contribute to the arrangement and/or claim housing benefit (which requires a commercial arrangement) they cannot continue to be deemed to be living solely in a familial arrangement and therefore any element of the payment from a source other than the section 23C element is taken into account when calculating the impact on the “Staying Put” carers own welfare benefit claim. The section 23C element will always be disregarded when calculating the “Staying Put” carer’s welfare benefit entitlement.

## Where meals are provided in the “Staying Put” arrangement

Where a commercial arrangement applies and Housing Benefit is paid to the young person based on a rent officer determination, all non-section 23C payments regardless of their source (Supporting People [or successor funding framework] payments, contributions from the young person, including Housing Benefit) will be counted as income under the ‘Boarder’ rules. Under these rules the first £20.00 and 50% of the remainder is disregarded. For example, if a carer receives £220.00 per week in total for the “Staying Put” arrangement of which £100.00 is paid by the local authority under section 23C, the amount taken into account by the DWP will be £120.00. Of the £120.00, £20.00 and a further £50.00 (50%) is disregarded, therefore the carer will be deemed to have a £50.00 per week income from the ‘Boarder’ (“Staying Put”) arrangement and they will lose £50.00 of their benefit. This arrangement would apply to each young person if two or more young people aged eighteen or over remain in the placement.

### **Note:**

The local authority could make a compensatory payment of £50.00 from section 23C (that would be disregarded by the DWP) which would negate the loss of the carer’s benefit.

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<sup>5</sup> A ‘close relative’ is a parent, parent-in-law (including a civil partner’s partner), son, son-in-law (including a son’s civil partner), daughter, daughter-in-law (including a daughter’s civil partner), brother, sister, step-parent (including a parent’s civil partner) stepson, (including a civil partner’s son), stepdaughter, (including a civil partner’s daughter), or the partners of any of these. It also includes half-brothers and sisters. Relations with in-laws or step-relatives are severed by divorce (or dissolution of a civil partnership) but arguably not by death – eg, a stepchild is still a stepchild after the death of her/his mother.



## Where meals are not provided in the “Staying Put” arrangement

Where a commercial arrangement applies and Housing Benefit is paid to the young person based on the Local Housing Allowance rules, all non-section 23C payments regardless of their source will be counted as income under the ‘Income from Sub-Tenants’ rules. Only the first £20.00 per sub-tenant is disregarded. For example, if a carer receives £220.00 per week in total for the “Staying Put” arrangement of which £100.00 is paid by the local authority under section 23C, the amount taken into account by the DWP will be £120.00. Of the £120.00, £20.00 is disregarded, therefore the carer will be deemed to have a £100.00 per week income from the ‘Sub-Tenant’ (“Staying Put”) arrangement and they will lose £100.00 of their benefits. This arrangement would apply to each young person who is deemed a sub-tenant.

### **Note:**

The local authority could make a compensatory payment of £100.00 from section 23C (that would be disregarded by the DWP) which would negate the loss of the carers benefit.

If the “Staying Put” carer/s is in receipt of Housing Benefit themselves and the young person claims Housing Benefit or Local Housing Allowance (depending if food/meals are included) the amount over the disregarded or ignored sum (see above – ‘Boarder’ or ‘Sub-Tenant’ rules) will be treated as income. The carer/s will then have an amount deducted from their Housing Benefit or Local Housing Allowance based claim according to Housing Benefit income rules.

If the carer/s is in receipt of two means tested benefits i.e. Income Support and Housing Benefit the deduction made will initially be from their Income Support and then Housing Benefit. If Income Support remains in payment then the carer is treated as having no income for purposes of the Housing Benefit claim and maximum Housing Benefit would continue to be payable.

In reality this will result in “Staying Put” carers who are in receipt of means tested benefits losing a percentage of their benefit and possibly opting out of a “Staying Put” Scheme. However, local authorities could choose to make an additional section 23C payment equivalent to the amount of benefits the carer would lose to avoid the carer being out of pocket.

It is important to note that where “Staying Put” carers are not in receipt of any means tested benefits the loss of some of the section 23C payment and disregard will not have any effect if a commercial arrangement is established and the young person claims Housing Benefit for the rent element of the arrangement.

It is also important to note that the section 23C DWP disregard only extends until the young person first leaves the “Staying Put” arrangement. If a young person returns to a “Staying Put” arrangement the whole payment from whatever source will be taken into account by the DWP.

## Non-Dependent Deductions

In certain circumstances where a “Staying Put” carer is in receipt of Housing Benefit a Non-dependent Deduction may apply in respect of the “Staying Put” young person. Non-dependent Deductions are normally applied to a person’s Housing Benefit claim in relation to people who



are living in their household and who are not counted as part of their family. This is likely to be the case in regard to “Staying Put” young people who are working and have an income. The level of the Non-dependent Deduction would relate to the income of the young person. This would still be the case if the local authority pays the “Staying Put” carer the full cost of the arrangement from section 23C and the young person does not make a contribution to the cost of the arrangement, either through Housing Benefit or a personal contribution. It is also important to note in this circumstance that if the young person claims Housing Benefit, or makes a contribution to the “Staying Put” arrangement it would become a commercial arrangement and the income would be treated as ‘Boarder’ or Sub-tenant’ income on the non-section 23C element.

Young people aged 18 to 25 in receipt of Income Support, income based Jobseekers Allowance and income related Employment and Support Allowance are unlikely to have an NDD applied to their “Staying Put” carers Housing Benefit claim.

## Pension Credits

Where the “Staying Put” carer is over the pension credit age (the pension credit entitlement age is rising from 60 to 65 between 2010-2020) and is in receipt of Pension Credit more generous disregard rules regarding income from ‘Boarder Arrangements’ apply and should be explored. In practice, the whole amount paid (in respect of a ‘Boarder Arrangement’ to the carer in receipt of Pension Credit is likely to be disregarded, regardless of the young person claiming Housing Benefit and the source of the payment.

## The Treatment of Benefits

Payments from Children’s Services to young people under section 17, section 20, section 23, section 24 and section 31 (Children Act 1989) do not count as income for benefit purposes. Payments made to young people and passed to former foster carer/s from section 23C (Children Act 1989) are disregarded in the assessment of the former foster carer/s’ income for benefit purposes, if the young person was formerly in the claimant’s care, is aged 18 or over and continues to live with the claimant within a non-commercial family type arrangement. If the arrangement is a commercial one the section 23C disregard ceases on any non-section 23C element of the whole payment.

Children’s Services may therefore find it helpful to distinguish between broad groups of carers within their “Staying Put” Scheme, for example:

1. Carers who are not in receipt of any means tested benefit where setting a commercial rent and young people claiming Housing Benefit would not have an impact on the “Staying Put” carers. In these circumstances young people claim Housing Benefit as a contribution towards the “Staying Put” arrangement for the rent element. The fact that this is a commercial arrangement and the “Staying Put” carers receive part of the payment from section 23C and part from the young person, via

contributions, or housing benefit is immaterial as the carer is not claiming any benefits.

2. Carers who are receipt of Pension Credit where income from 'Boarder' arrangements are disregarded in calculating their entitlement to Pension Credit and Housing Benefit. In these circumstances young people claim Housing Benefit as a contribution towards the "Staying Put" arrangement for the rent element. The fact that there is a commercial arrangement is immaterial as those in receipt of Pension Credit have any income from a 'Boarder' arrangement ("Staying Put") disregarded.
3. Carers who are in receipt of a means tested benefit where Children's Services continues to pay the entire allowance to the "Staying Put" carer from section 23C. This is not therefore deemed a commercial arrangement and as the payment is wholly from section 23C it does not affect or have any impact on the carer's own benefits.
4. Carers who are in receipt of a means tested benefit where young people claim Housing Benefit as a contribution towards the "Staying Put" arrangement for the rent element and Children's Services provide the remainder from Section 23C, and an additional compensatory payment from section 23C equivalent to the amount of benefit lost by the carers. Whilst this does become a commercial arrangement and carers lose an element of their means tested benefits, the payment made by Children's Services to compensate for the lost amount of benefit will, itself, be disregarded if it is made from section 23C.

Early planning for, and identification of, the benefits and financial circumstances of individual carers is critical to ensuring that appropriate plans and arrangements are in place for both the carers and young person. Given the complexity of making these arrangements, commencing planning these from the child's 16th birthday should provide sufficient time to ensure the necessary arrangements and support are in place by their eighteenth birthday. This should provide enough time to ensure that "Staying Put" carers and the local authority evaluate the different options set out above (in addition to the DfE regulatory and DWP benefit and HMRC tax issues) and choose the appropriate one that best suit the carers circumstances and whether setting a commercial arrangement is a viable option for the carers and young person.

## Council Tax and Council Tax Benefit

The position regarding Council Tax will vary depending on the circumstances of the carers, the number of adults in the household and the activity that the young person is engaged in. Within local authorities' "Staying Put" policies, the treatment of council tax liability and council tax benefit will need to be addressed.

Young people undertaking full time education are 'invisible' for council tax purposes.

In circumstances where "Staying Put" carers qualify for a 25% single person reduction or full Council Tax Benefit and the situation of the young person has an impact on the discount or Council Tax Benefit, the local authority policy will need to set out how this change will be addressed, dealt with and/or impact on the "Staying Put" payments to carers. From April 2013

national Council Tax Benefit rules will be abolished and will be replaced by a council tax reduction scheme administered by, and reflection individual local authority priorities.

# Her Majesty's Revenue and Customs (HMRC), Income Tax and National Insurance

The rules governing Income Tax and National Insurance issues for former foster carers changed on 6th April 2010 from Adult Placement Care arrangements to Qualifying Care Relief Shared Lives Carers' arrangements.

HMRC has confirmed that where a "Staying Put" arrangement meets the qualifying criteria as set out in the 'Terminology Section' (and where the young adult continues to be cared for as a member of the carer's family) it will be treated under the new Qualifying Care Relief 'Shared Lives Carers' rules. In effect, these rules extend the Income Tax and National Insurance rules that apply to foster carer/s to "Staying Put" carers.

In order to qualify for the HMRC Qualifying Care Relief – 'Shared Lives Arrangements' young people are required to 'share the individual's ("Staying Put" carers) home and daily family life during the placement' i.e. live as a 'member of the carer's family'<sup>6</sup> If the "Shared Lives Arrangements" do not apply, the "Rent a Room" rules may apply or the normal tax rules will apply.

"Staying Put" carers will be covered by the Qualifying Care Relief system where they provide a "Staying Put" arrangement for a young person who was looked after immediately prior to the young person's 18th birthday. Qualifying Care Relief can continue until the young person reaches the age of 21, or, until they complete a programme of education or training. A young person below the age of 21 does not have to be engaged in education or training for the Qualifying Care Relief system to apply to their carers.

The Qualifying Care Relief system provides for foster carer/s and/or "Staying Put" carer/s to earn up to a given amount without paying Income Tax or Class 4 National Insurance Contributions on their caring income. The Income Tax free allowance consists of two elements. Firstly, a fixed amount per foster care or "Staying Put" household per year (for 2013 -2014 this is set at £10,000). Secondly, an additional amount per week per child (£200 per week under the age of eleven [0-10], £250 per week age eleven to their eighteenth birthday [11-17] 2013-2014) and £250 per week per adult aged eighteen to twenty-first birthday [18-20] or until the end of the programme of education or training, as defined as "Staying Put" by HMRC (see terminology section).

The £10,000 per year applies once per household regardless of how many foster children or "Staying Put" young people are placed. The additional amount applies per child/young person per week. Where there is more than one paid "Staying Put" carer in the household, the allowance is shared equally by both carers.

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<sup>6</sup> ITTOIA 2005 S806A (2)(b)) HMRC Guidance

The tax free allowance is only available to households with three or fewer placements. However, foster care placements are excluded for this purpose, and sibling groups are counted as one placement.

The tax free allowance only applies to the “Staying Put” carer’s income from caring. If they have income from other sources, they will pay tax on that income in the normal manner.

If the “Staying Put” carer/s exceed the allowance they will have a choice of using the ‘simplified’ method or the standard profit and loss method to calculate their taxable profits. The carer/s will also be liable to pay Class 4 National Insurance Contributions on their taxable profit. Under the simplified method, a carer’s taxable profit is the income they receive from caring which exceeds their tax free allowance. Where foster carer/s or “Staying Put” carer/s do incur an Income Tax and Class 4 National Insurance liability and they have not used their personal allowance this can be used to off-set this liability.

If the carer/s have claimed the tax free allowance (used the simplified method), they may not also claim the ‘Rent a Room’ relief.

Individual carers can consult their local HMRC office for guidance on their circumstances and liabilities.

In practice HMRC will treat the taxable profit from foster care or “Staying Put” care as earnings from self-employment for National Insurance Contributions purposes.

“Staying Put” carer/s as well as foster carer/s should note that they may be able to claim Working Tax Credits which are administered by HMRC. Fostering/“Staying Put” care is counted as work for Working Tax Credit purposes. The carer’s taxable income is included in the total household income that is used to assess the amount of tax credits that they are entitled to. So, where the carer is paid less than their tax free allowance, their income from caring for tax credits purposes is also nil.

HMRC is aware that a number of foster carers and “Staying Put” carers may not have registered for Class 2 National Insurance Contributions because they make little or no taxable profit. Foster care and “Staying Put” care is deemed as self-employment and as such carer/s should register as self-employed. All self-employed people aged 16 and over who are below State Pension age are liable and must register to pay Class 2 National Insurance Contributions. Failure to do this may affect their entitlement to Employment and Support Allowance, Maternity Benefit, State Pension and Bereavement Benefit. However, self-employed carers may be able to apply for Carers Credits which have replaced Home Responsibilities Protection, and those with low taxable profits may be able to apply for a Small Earnings Exemption.

To claim a carers credit, foster carers/“Staying Put” carers must complete form CF411A available from HMRC ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)).

If carers have not previously registered as self employed they can obtain further information by calling the Newly Self-employed Helpline on **0845 915 4515**.

If they are currently registered to pay Class 2 National Insurance Contributions they can obtain further information by calling the Self-employed Helpline on **0845 915 4655** instead.

# Conclusion

The information set out in this leaflet and the evaluation of the eleven “Staying Put” pilots will help to improve practice and support to a ‘vulnerable’ group of children/young people leaving care who require an on-going supportive environment.

The information in this guidance sheet has been endorsed by DfE, DWP and HMRC and distributed within each agency. Where each respective agency encounters a difficulty with a particular case the leaflet should be used to identify each agency’s legislative framework.

The information in this information sheet is correct as of January 2013 and will apply to “Staying Put” and Fostering arrangements during 2012-2013. The introduction of the Universal Credit system from October 2013 will create changes to the benefit and tax credit system for foster carers, “Staying Put” carers and young people in, and leaving care.

# APPENDIX A

## Sources of Funding, Payments to “Staying Put” Carers and Setting the Rent Level

Many local authority Children’s Services continue to pay their “Staying Put” carer/s (from the young person’s eighteenth birthday) the same amount they previously paid them as foster carer/s minus the clothing and pocket money allowance which the carer/s provided to the child. The clothing and pocket money allowance being replaced by the young person’s earnings or benefit entitlement from eighteen. The remainder of the allowance paid to carers being made up of a payment entirely from a) Children’s Services or a combination of funding from 1) Children’s Services, 2) Supporting People (or successor funding framework), 3) a contribution from the young person for rent, service charges (utilities) and food, some of which may come from Housing Benefit.

Each Children’s Service will pay foster carers and “Staying Put” carer/s a different amount based on local priorities and budgets. Children’s Services should set out a policy regarding the rate they pay “Staying Put” carers and what the payment consists of. In setting the breakdown of the whole allowance Children’s Service may wish to consult with the local Supporting People Team (or successor service) and with local Registered Social Landlords to explore how they have set the rate of the rent, support, service charges and food elements of their allowances.

When setting the level of the rent, Children’s Services will need to consider an amount that ensures the arrangement covers the cost of providing the accommodation, whilst at the same time takes account of the local market rent levels and therefore does not set an unrealistic level for young people who are working. Using the shared accommodation Local Housing Allowance rate plus an additional amount for meals/service charges may provide a useful starting point regarding setting the rent level (for example, £50.00 to £70.00 rent, plus £35.00 for food and service charges).



# APPENDIX B

## Practical Arrangements

In order to ensure the “Staying Put” arrangement continues to meet the needs of the young person and their carer/s, the local authority “Staying Put” policy will need to clarify some of the expectations of both parties when the foster placement becomes a “Staying Put” arrangement. Clarifying the following points in advance of a child/young person’s 18th birthday will help to ensure continuity in what can often be a complex and stressful transition for all parties.

“Staying Put” carers should be encouraged to inform their mortgage provider or landlord and their buildings and contents insurance provider that they will continue to be supporting a former foster child as a young adult under a “Staying Put” arrangement. Failure to inform the above may cause a breach of mortgage/tenancy requirements and may result in their insurance cover being void due to a ‘failure to disclose material facts’.

Where “Staying Put” carers transport young people, similar arrangements to those in place for transporting foster children should continue to apply, this may include, the need for comprehensive business insurance, a valid MOT and a Road Vehicle License and a road worthy vehicle.

In addition, “Staying Put” carer’s should be provided with information about liability insurance cover in situations where “Staying Put” young people may make an allegation against a foster child in placement, or against their “Staying Put” carer/s, or an allegation is made against the “Staying Put” young person. The majority of foster carers hold public liability insurance stemming from their local authority membership of Fostering Network or the British Association for Adoption and Fostering. “Staying Put” policies should clarify the arrangements for extending cover after a child/young person’s 18th birthday.

The young person’s pathway plan and/or the ‘living together agreement’ that often supersedes the placement plan (from age 18) in many local authorities should set out all of the practical arrangements regarding the young person remaining as a young adult in the “Staying Put” arrangement. Many of which, will be an extension of the expectations on them when they were a foster child. The pathway plan and/or ‘living together agreement’ should cover arrangements such as:

1. Preparation for adulthood and independence tasks;
2. Finance, including young people having credit cards, loan agreement and mobile phone contracts registered at the address;
3. Income and benefit claims;
4. Friends and partners visiting and staying at the address;
5. Staying away for nights/weekends and informing carers of movements;
6. Education, training and employment activities;

7. Health arrangements;
8. Move-on arrangements;
9. Issues related to younger foster care children in the placement, i.e. safeguarding, being a positive role model and time keeping.

# APPENDIX C

## Example of Foster Care and “Staying Put” Care Income Tax and National Insurance Calculation

Example, the foster care “Staying Put” household contains one 8 year old, one 14 year old and one 19 year old all of whom have been in placement, or a “Staying Put” arrangement for over one year.

£10,000 x 1	=	£10,000
£200 x 52 weeks    8 year old	=	£10,400
£250 x 52 weeks    14 year old	=	£13,000
£250 x 52 weeks    19 year old	=	£13,000
Total tax free allowance amount	£46,400	(Qualifying Amount)

If the total receipt from providing the two placements and the “Staying Put” arrangement is below the £46,400 (Qualifying Care Receipts) allowance the foster carer/s / “Staying Put” carer/s taxable income from caring will be nil. They will not be liable for any Income Tax or Class 4 National Insurance Contributions on that income. If there are two paid carers in the household, their tax free allowance will be £23,200 each.

# APPENDIX D

## Categories of Young People Eligible for Leaving Care Services and Support

### **Eligible children: [paragraph 19(2)(b) of Schedule 2 to the Children Act 1989 and Regulation 40 of the Care Planning, Placement and Case Review (England) Regulations 2010]**

- An eligible child is a young person aged 16 or 17 who is looked after and has been looked after for at least 13 weeks after the age of 14. [Can become an eligible child at any point from 16th to 18th birthday as long as they have completed 13 weeks] [must complete 24 hours looked after age 16/17].
- The 13 weeks can be continuous period or a series of episodes.
- In calculating the 13 weeks no account is taken of pre-planned short breaks amounting to no more than 4 weeks and where a child returns to their parent, or someone with parental responsibility.

### **Relevant children: [Section 23A(2) ]**

- A relevant child is a young person aged 16 or 17 who was an 'eligible' child' but is no longer looked after.
- Additional relevant children:
  - Detained, or in hospital prior to 16th birthday, and
  - Looked after for at least 13 weeks after age 14 and looked after at point of being detained, or entering hospital.
  - In calculating the 13 weeks no account is taken of pre-planned short breaks amounting to no more than 4 weeks and where a child returns to their parent, or someone with parental responsibility.
- A child who has lived with someone who has parental responsibility or a residence order for a continuous period of 6 months or more, and has ceased to be looked after (whether that period commenced before or after they ceased to be looked after) is not deemed a relevant child (but is deemed a qualifying child).
  - If the above arrangement breaks down (before the 18<sup>th</sup> birthday) and the child ceases to live with the person concerned, the child becomes a relevant child.

### **Former Relevant children (age 18 to 21, or, until the education or training programme being undertaken on their 21st birthday is completed): [Section 23C (1)]**

- A young person who was previously an 'eligible' child or a 'relevant' child.

### **Former Relevant children (age 21, and under 25) [Section 23CA (1)]**

- Young people who inform the local authority that they want to pursue education or training between the age of 21 and 25 and where previously a former relevant child.

### **Persons Qualifying for Advice and Assistance (aged 16 to 21, and under certain circumstances aged under 25)**

- Young people aged at least 16, and under 21 who were subject to a special guardianship order and were looked after before the making of that order.
- Young people who were previously subject to a private fostering arrangement.
- Young people who successfully returned home for six months (aged 16/17) and were previously eligible and/or relevant.
- Young people who were looked after for less than 13 weeks between the age of 14 to 18, but were looked after for at least 24 hours aged 16 and 17.

- Young people aged 16, and under 21 who were looked after in a series of pre-planned short breaks.

# APPENDIX E

## Qualifying Care Relief and Supported Lodgings

Supported Lodgings hosts/carers are likely to be able to use the HMRC Qualifying Care Relief Income Tax and National Insurance system (for foster carers and 'shared lives' carers) if they and their Scheme fit the following criteria:

1. Carers have been approved as foster carers under the Fostering Services (England) Regulations 2011;
2. Children are 16 or 17 year old children looked after placed with the foster carer/s under section 22B of the Children Act 1989 (CA89); or
3. Young people are living with the foster carer or the former foster carer under a "Staying Put" arrangement having, immediately prior to their 18th birthday, been a looked after children placed with the foster carer under section 22B of the CA89.

If the Scheme and individual carer meet the above criteria, in effect the carers may be called a supported lodgings host/carers but would be deemed a foster carer or "Staying Put" carer for tax purposes. Supported Lodgings staff should check with their legal and policy department and with their local HMRC office to ensure their Scheme and placements comply with the necessary requirements.

All foster carers and "Staying Put" carers (supported lodgings hosts/carers) must register as self-employed.

## Rent a Room, the Normal Tax Rules and Supported Lodgings

From the 6th April 2011 the option of supported lodgings schemes (that provide 'accommodation and a significant degree of care' to a child [adult]) using the Adult Placement (Shared Lives) tax framework ended. Some supported lodgings schemes may qualify for the newly introduced Qualifying Care Relief or, alternatively the normal tax rules and/or the Rent a Room scheme rules will apply. See Helpsheet HS236 tax year 6th April 2011 to 5th April 2012.

The Rent a Room scheme applies to owner occupiers and tenants who receive rent from letting furnished accommodation in their only or main home and may be used by carers providing supported lodgings if they meet the rules of the scheme. The scheme sets out that "if gross receipts (before expenses and including any amounts received for meals, goods and services provided, such as cleaning or laundry) and any balancing charges (in relation to past Capital Allowances) do not exceed £4,250 the carer will be exempt from Income Tax". Carers can however, opt out of Rent a Room, and may want to do this if they have made a loss.

If a carer's gross receipts are more than £4,250 they can choose between paying tax on:

- their actual profit (gross rents minus actual expenses and capital allowances); or

- gross receipts (and any balancing charges) minus £4,250 – with no deduction for expenses or capital allowances.
1. The £4,250 limit is reduced to £2,125 if during the period the income is shared with someone else who received income from letting accommodation in the same property.
  2. Supported lodgings carers who meet the requirements of the Rent a Room scheme and who receive less than £4,250 per year from providing supported lodgings are automatically exempt from tax.
  3. The £4,250 is the limit regardless of the number of placements.
  4. If a carer earns over £4,250 from providing supported lodgings they need to register for self assessment and pay tax on the profit they make from letting, worked out in the normal way for a rental business (that is, rents received minus expenses).
  5. Supported lodgings carers should discuss their situation with their tax adviser (accountant) or local HMRC Office to clarify the arrangement (Rent a Room or self-employment) which is appropriate to their situation.

HM Revenue and Customs Helpsheet HS223 sets out information about the rent a room Income Tax framework: <http://www.hmrc.gov.uk/helpsheet/hs223.pdf>

**Note:**

Supported Lodgings schemes and carers who are not able to use Qualifying Care Relief will need to be aware that the Rent a Room scheme generally only applies to payments relating to income from the rental of property, if carers are also receiving payments for support of a young person this will need to be assessed under the normal profit and loss rules.

Supported Lodgings schemes will therefore need to provide information on the split between accommodation payments (rental income) and support payments (support income) so that carers can assess the amount apportioned to Rent a Room, and the amount apportioned to the normal profit and loss system (self-assessment). Schemes will then also need to note the DWP rules regarding housing benefit as housing benefit can only be claimed for accommodation costs and certain eligible service charges.

The broader HMRC definition of “Staying Put” may enable some supported lodgings carers providing accommodation and support to certain care leavers aged eighteen and older to come within the scope of Qualifying Care Relief. For example, a supported lodgings carer who provides accommodation and support for a formerly looked after young person where the arrangement meets the four HMRC “Staying Put” criteria set out on page 6, may be able to use the Qualifying Care Relief system if the local authority deems the carer a “Staying Put” carer (in part, by paying an element of the allowance to the carer). Unfortunately, the same carer would not necessarily be able to use the Qualifying Care Relief system in relation to payments for children under 18 (or even the “Staying Put” young person prior to their eighteenth birthday) if they were not an approved carer within the definition of one of the specified social care schemes (foster care, adult placement care, kinship care, “Staying Put” care, parent and child arrangements).

DfE is grateful to John Short, for his invaluable contribution to the development of this guidance.





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